

Navigating Multistate Compliance: Employment Law Challenges for Remote and Hybrid Workforces in the Iron and Steel Industry



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The law firm of Tucker Arensberg contributes this quarterly column focused on the legal issues that may impact our readers. Tucker Arensberg is a full-service law firm headquartered in Pittsburgh, Pa., USA. Servicing the legal needs of the iron and steel industry, Tucker Arensberg has also provided legal counsel to the Association for Iron & Steel Technology.

In the wake of COVID-19, many employers in the iron and steel industry continue to offer remote work arrangements. Some employees are exclusively remote, while others have a hybrid arrangement consisting of both telework and in-person office time. As a result of this modern employment trend, multistate and remote work employers must ensure that their companies comply and keep up with an evolving variety of employment laws at every level — federal, state and local. The application of most employment laws for remote-based employees generally focuses on where the employee is physically located and performs work.

Federal employment laws like the Civil Rights Act of 1964, the Fair Labor Standards Act, Americans with Disabilities Act, Age Discrimination Employment Act, etc., are baseline protections employers must follow. Some federal labor laws, such as the Equal Pay Act and the Fair Labor Standards Act, apply to almost all employers, regardless of size. However, other laws, such as the Family Medical Leave Act, Title VII of the Civil Rights Act, etc., only apply to employers that maintain a certain number of employees. It is important that employers are aware of federal labor laws that may apply to their company if they have a sizable workforce. Generally, the more employees an employer has, the more compliance obligations it will have under federal labor laws.

When states adopt laws on similar federal employment topics, those laws may only build upon the federal protections. Not only must employers consider an employee's state, but they also need to be aware of the counties and cities in which their employees are physically located and performing remote work too. As a result, some states and localities have stricter employee protections than other states. Of note, states and localities generally adopt laws on employment topics when proposed federal legislation on these same topics cannot be passed, evidenced by the few employment topics identified in this article.

Wage and Hour Issues

The current federal minimum wage is US\$7.25 per hour. The federal minimum wage is a floor that employers cannot go below; thus, no employer nationwide can pay their employees less than the current federal minimum wage unless a certain exception applies (i.e., tipped employees).

As an example, the minimum wage in Pennsylvania is US\$7.25 per hour, while the minimum wage in New York (at-large) is US\$15.00 per hour. If a company is located in one state but the remote workers are located in other states, companies must generally pay that remote worker at least the minimum wage where that employee is physically located and performs work. The minimum wage in certain New York

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counties and cities is higher than New York at-large, such as New York City, Nassau County, Suffolk County and Westchester County. The minimum wage for New York City and those specific counties is US\$16.00 per hour.

Paid Sick Leave

Sick leave is a benefit that allows employees to take time off from work while still receiving their regular pay when they or a family member is sick, injured or receiving medical treatment. These laws specify information like accrued time off rates and maximum accrual limits. As of November 2024, there is no federal paid sick leave law requiring a private employer to pay for their employees' short-term illnesses. On the other hand, 18 states, Washington, D.C., and many counties and cities have passed their own paid sick time laws. As an example, Pennsylvania does not have a statewide law requiring private employers to provide paid sick leave. However, Allegheny County, Pa., USA, and the city of Pittsburgh have their own paid sick leave laws, despite the city of Pittsburgh being situated in Allegheny County. The key difference between these two laws is that Allegheny County's law only applies to employers with 26 or more employees, while Pittsburgh's law applies to employers with fewer employees. Depending on the jurisdiction in which the remote employee is physically located and performing work, employers must be in compliance with that state's or locality's sick leave laws, which may require that the time off be paid.

Non-Competes

A non-compete is a contract or contractual provision that prevents employees from working for a competitor or starting their own business for a set period of time and/or within a certain geographic area after leaving their jobs. As of November 2024, there is no federal legislation enacted on the legality of non-competes. In April 2024, the Federal Trade Commission (FTC), a federal agency, issued a federal rule banning all pre-existing and future non-competes subject to a few exceptions. Subsequently, in August 2024, a federal Texas court ruled that the FTC cannot enforce this non-compete ban. In response, the FTC appealed seeking to reverse the federal Texas court's decision. Not only is it important for employers to monitor the status of this appeal, but they should also be monitoring how states govern non-competes.

As of November 2024, only four states ban the use of non-competes entirely — California, North Dakota, Minnesota and Oklahoma. Many other states have legislation either partially banning non-competes, eliminating non-competes for certain industry employees (i.e., healthcare), or prohibiting non-competes for workers making below a certain amount of income. Depending on where an employer's remote employees are physically located and performing work, an employer would not likely be able to successfully enforce one standard non-compete agreement

for all of its remote employees due to states' differing positions on non-competes.

Pay Transparency

Pay transparency laws require employers to disclose salary information, ranges and benefits to job candidates, as well as their current employees. As of November 2024, there is no federal pay transparency law. Meanwhile, 10 states have enacted pay transparency laws as well as many counties and cities. Notably, some states require transparency for remote jobs, while others only require it for hybrid or in-office roles. As an example, California requires employers to disclose salary information in job postings for remote jobs. Failure to comply with pay transparency laws can expose employers to state agency actions, fines, penalties and even lawsuits.

Biometric Data

Biometrics are measurements related to an employee's unique physical characteristics, such as fingerprints, palmprints or recognition (facial, retinal or voice). As data collection tools advanced, states and localities responded to this advancement by enacting laws to prevent private entities and employers from collecting employees' biometric information without the proper safeguards, i.e., disclosure and informed consent. Like many other employment topics, there is no federal law enacted on the collection of employees' biometric data as of November 2024. Instead, states and localities have enacted laws on biometric data collection. Generally, these laws require an employee's informed consent prior to collection, protect the confidentiality of the information, prohibit discrimination based on the information collected, and prohibit the sale or unauthorized dissemination of an employee's information. Some states and localities prohibit specific types of mandatory biometric data collection. For example, New York employers are prohibited from requiring their employees to provide their fingerprints as a condition of their employment (unless the employee voluntarily consents in advance). As with pay transparency, failure to comply with biometric data collection laws can expose employers to state agency actions, fines, penalties and lawsuits.

Right-to-Work

Right-to-work laws address labor union memberships. Specifically, they address whether an employee is required to join a union or pay a union's dues to be hired or to work for a company. Most right-to-work laws prohibit labor unions and employers from entering contracts that only employ unionized workers for the jobs in the contract. As of November 2024, there is no federal right-to-work law mandating that every state be a right-to-work state. The Taft-Hartley Act of 1947, an amendment to the National Labor Relations Act, granted states the power to implement

right-to-work laws. As of November 2024, there are 26 states that have adopted these right-to-work laws. In these states, employees may join a union, but employers cannot force or compel employees to join a union as a term or condition of employment. In states without right-to-work laws, union membership or dues generally could be required depending on the specific agreements. Right-to-work laws impact how employers manage labor relations, union negotiations and employee agreements, especially employers with multistate employment and remote work.

Tax Implications

State and local income taxes can be difficult to understand and manage for employers with remote workers. At the federal level, U.S. workers pay taxes based on where they physically work, not where their employers operate. Meanwhile, each state usually has its own rules regarding taxes for employees who live or work within its borders. Having employees who work remotely in different states may subject a company to various state taxes and filings.

Addressing these obligations as early as possible will aid employers in not inadvertently violating state tax laws that could result in penalties and fines.

As one can see, federal laws are the baseline protections when it pertains to state and local level laws. The laws described in this article are not the only location-based employment laws employers must be mindful of. Other important employment laws that evolve over time and can differ from state to state, county to county, and city to city include overtime pay, paid time off, sexual harassment training, criminal background checks, garnishment restrictions, wage deductions, worker classification, workers' compensation, etc. Due to the variety of rights afforded to employees at every level (federal, state and local), it is important for employers to understand which employment laws apply to each one of their employees' workplace locations. As an employer, it is your responsibility to ensure that remote workers and your employees located across multistate offices are in compliance with employment laws at the federal, state and local level. ♦

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